Equality of Opportunity and Freedom from Discrimination

MHR Connections

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# Quebec Government's proposals cause for serious concern

*The government's proposals are cause for serious concern, said the President of the Commission, Jacques Frémont.*

Québec's Commission of Human Rights and the Rights of Youth believes that several proposals in the government's policy paper on the Québec Charter of Values contravene the province's Charter of Human Rights and Freedoms and infringe on fundamental rights and freedoms.

The Manitoba Human Rights Commission has added its voice to this concern and supports the report by the Québec Commission. Executive Director Joan Braun says that the Manitoba Human Rights Commission agrees with the findings of the Québec Commission's report which states the analysis of a law that prohibits the wearing of religious symbols by public sector employees reveals a clear violation of rights and would not withstand a court challenge.

"When it comes to the protection of human rights, silence can be dangerous," Ms Braun says, and adds that along with the Québec Commission, "we all should be concerned."

The Québec Commission paper stated that prohibiting the wearing of "conspicuous" religious symbols by public sector employees does not meet the Québec Charter test and that the proposal to formalize "religious" accommodations could restrict the scope of accommodations granted on the basis of other grounds of discrimination, including for disabled people.

In its comments last week, the QuébecCommission concluded that the government's proposals are contrary to the spirit and the letter of the Charter, which is designed to protect the rights of everyone.

"They represent a clear break with the text of the Charter, a quasi-constitutional law adopted by the National Assembly in 1975. It is the most radical proposal modifying

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THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

www.manitobahumanrights.ca

## The Rights Connection
## by Joan Braun - Executive Director
### The Power of Mediation

Last month we were pleased to release a settlement that provides additional American Sign Language (ASL) funding for young athletes participating in organized amateur sport. This settlement is extremely important for two reasons. First, it removes possible discrimination from Deaf young athletes. As you may know, discrimination has the effect of denying equality of opportunity to a person. It may also impose burdens or disadvantages on individuals which further limits access to opportunities that are available to others.

This settlement also reveals how treating an entire group differently offends the worth and dignity of many. When a group of people who share a protected characteristic such as ancestry, disability, age or sex are adversely affected by a policy or rule, it can be "systemic discrimination." This is the second reason why this settlement and the subsequent publicity it received is important. It brought the difficult concept of systemic discrimination to everyone's attention in a way that is easily understood.

In this case, more than one child was affected. All are young Deaf athletes. The parents believed if the children were denied equality of opportunity, their success would be limited and their true potential would never be realized. This is what systemic discrimination is all about.

To avoid individual or systemic discrimination, we must ensure that what is available to most people is reasonably available to all.

There is one more important point to be made. The parties in this case, voluntarily entered into the Commission's mediation process. Since everyone was interested in looking for a solution, no investigation took place and there was no finding of discrimination. It wasn't always easy, with some misunderstandings, tense moments and delays, but in the end everyone involved was proud of the result.

As this is one of the first well-publicized settlements, perhaps it will encourage other complainants and respondents to consider mediation at the Commission. I would like to congratulate both parties for their patience and exceptional work.

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the Charter since its adoption," said the President of the Commission, Jacques Frémont.

The proposal to ban public service employees from wearing "conspicuous" religious symbols, if adopted, would clearly be in violation of the Charter. This prohibition could not be valid without resorting to the notwithstanding clause, which cannot be done without meeting strict conditions.

The proposed prohibition of religious symbols stems from a misconception regarding freedom of religion as protected by the Charter and in international law. It also misinterprets the duty of state neutrality. In fact this obligation applies to the state institutions, but not to its employees or representatives, other than their duty of reserve and impartiality.

"It is unreasonable to presume the partiality of a public sector employee due to the simple fact that he or she wears a religious symbol," the Commission explains.

Commission des droits de la personne et des droits de la jeunesse Québec

## Equality between women and men

The Québec Commission also questioned the objective set out in the government's policy paper to change the guidelines that presently govern the duty to accommodate by defining the concept of undue hardship. One of the proposals would be aimed at "reinforcing equality between women and men" and would make it the first condition for approving a reasonable accommodation request.

The Québec Charter already provides protection against gender discrimination and guarantees the right to equality between women and men, and has done so since 1975. Moreover, the interpretative provision added to the Charter in 2008, reiterates that rights are equally guaranteed to women and men.

The Québec Commission emphasizes that there already exists guidelines governing the duty to accommodate and that an accommodation that would infringe on the right to equality, including equality between women and men, must not be granted.

In its comments, the Commission explains that the government's proposal to assess accommodation requests on the basis of "shared values" and "core community values" is problematic as those concepts are too vague. Moreover, the government's wish to formalize the duty to accommodate only when it involves religion also presents several legal and practical challenges. These elements are likely to have significant adverse effects on the concrete exercise of rights and freedoms, in particular, of disabled persons, pregnant women and the elderly.

The Comments on the government policy paper is available here: www.cdpdj.qc.ca/Publications/Commentaires_orienations_valeurs_En.pdf

Also visit the new section of the Commission's Website where you will find further information on this issue: www.cdpdj.qc.ca/rights-for-all.

*Last year we announced that Winnipeg artist Jayne Nixon was chosen to create art work symbolizing the human rights work of the recipients of Human Rights Commitment Award of Manitoba. In 2013, three Manitobans will receive this beautiful award for their work.*

# Do you know someone deserving of this award?

Has someone you know helped in the understanding of a mental illness like Jane Burpee does? What about standing up for the rights of new immigrants? Louise Simbandumwe does that. Do you know an organization that has worked against discrimination over the years? The Rainbow Resource Centre is still fighting that battle and along with these two distinguished women received 2012 Human Rights Commitment Awards of Manitoba last December.

Now we are looking for individuals and groups to be considered for the 2013 award and are hoping for public input.

The Commitment Award of Manitoba honours Manitobans (Individuals or groups) who courageously contribute to the advancement of human dignity and the elimination of discrimination in the province.

We also want to acknowledge the work of young people who will receive The Sybil Shack Human Rights Youth Award, which recognizes exceptional young people (individuals or groups under 25 years of age) who work tirelessly towards the promotion and protection of human rights either within Manitoba or abroad.

All that is required is a contact/reference person (name, phone number, email address), the name of the potential recipient, and a brief reason why this group or individual should be considered for either the Commitment Award or the Youth award. You may also enclose any supporting articles, Facebook pages, websites, letters etc. if you like.

Please send information about potential recipients of a Commitment or Sybil Shack Youth Award to hrc@gov.mb.ca by November 15, 2013, or let us know if you have any questions.

An independent panel will review all the suggestions and you will be informed as to their final decisions. A reception will be held in December celebrating International Human Rights Day where the recipients will receive their award.

The Manitoba Human Rights Commission and its partners, the Canadian Human Rights Commission and the Manitoba Association for Rights and Liberties have been awarding the Human Rights Commitment Award and The Sybil Shack Human Rights Youth Award and applaud all the silent heroes in their fight against discrimination.